the letter so produced was, in fact, not an authority to the Enforcement Officer within the meaning of section 53. He accordingly ruled that since the Enforcement Officer was not in possession of the required authority in writing under section 53 there was no case to answer, and he acquitted and discharged the defendant. Subsequently, on re-consideration, the learned Magistrate himself came to the conclusion that he had misdirected himself in law in that the provisions of section 53 were wholly irrelevant to the facts of this case. I agree with that view. On the facts, it was quite clear that the vehicle had been weighed on an accurate weigh-bridge and that its laden weight was found to be in excess of that permitted under the conditions of the Permit granted to the defendant. That was sufficient to constitute the offence charged. Whether or not the Enforcement Officer in question was the holder of any valid authority in writing from the Commissioner of Road Transport and whether or not he had required the defendant to proceed to the weigh-bridge for the purpose of being weighed were wholly irrelevant to the facts of the case. I, therefore, set aside the Order made by the learned Magistrate acquitting and discharging the defendant and direct that the case be remitted to the Magistrate for him to hear the defence.

Order accordingly.

ASMABAI v. MOTILAL DOSHI & ANOR.

[O. C. J. (Ong J.) April 21, 1960]

[K. L. — Civil Suit No. 180 of 1957]

Landlord and Tenant — Partnership — Partner holding premises on trust for partnership — Dissolution of partnership — Whether tenancy created between original landlord and partnership — Whether sub-tenancy created between lessee and partnership — Control of Rent Ordinance, 1956.

On March 27, 1950, one Abasbhoy, occupier of No. 47 Batu Road, Kuala Lumpur, entered into a partnership with the defendants to carry on in the same premises the business of textile merchants.

On October 15, 1954, Abasbhoy died and probate of his will was granted to the plaintiff (his widow) and a son as executors. Pursuant to clause 19 of the partnership deed, the plaintiff, as legal representative of the deceased, became a partner in the firm.

In September 1955, the plaintiff in her personal capacity purchased the premises and was registered as proprietor. On February 19, 1957, she gave notice terminating the tenancy as from March 31. On the same day, the legal representatives of the deceased as co-partners gave notice to the defendants that they did not wish to continue the partnership business after March 20, 1957. A notice of dissolution was published in the various newspapers with the consent of all the partners.

On these facts, the plaintiff claims possession of the premises, mesne profits from April 1, 1957 and costs.

Held: (1) on the construction of the partnership deed, clauses 5 and 18 are not irreconciliable if the latter is read as applying only in the event of the partnership extending beyond the original term of 7 years;

(2) even if clauses 5 and 18 conflict, clause 5 must prevail over clause 18, following *Forbes* v. *Git* (3);

(3) on the construction of the agreement, the relationship of landlord and tenant was created as between Abasbhoy and the partnership, notwithstanding the label of a trust they had put upon this relationship;

(4) alternatively, the effect of the agreement was to substitute the partners, in the place of Abasbhoy, as tenants of the original landlord, because an underlease for the residue of a term is in law an assignment;

(5) therefore, on either view, the defendants were entitled to the protection of the Control of Rent Ordinance, 1956 as statutory tenants.

Cases referred to:—

(1) *M'Connel* v. *Murphy* (1873) L.R. 5 P.C. 203, 218.
(2) *Bedson's Trusts* (1885) 28 Ch. D. 523, 525.
(3) *Forbes* v. *Git* [1922] 1 A.C. 256, 259.
(4) *W.A. Buttery* v. *James Warren & Co. Ltd.* [1957] M.L.J. 56.
(5) *Doe* v. *Bluck* 8 C. & P. 464; 173 E.R. 577.
(6) *Benham* v. *Gray* 136 E.R. 827.
(7) *Burdon* v. *Barkus* 45 E.R. 1098.
(8) *Pocock* v. *Carter* [1912] 1 Ch. 663.
(9) *Facchini* v. *Bryson* [1952] 1 T.L.R. 1386.
(10) *Addiscombe Garden Estates Ltd.* v. *Crabbe* [1958] 1 Q.B. 513.
(11) *Lewis* v. *Baker* [1905] 1 Ch. 46, 50.

ACTION.

D. G. Rawson for the plaintiff.

R. Ramani for the defendants.

Cur. Adv. Vult.

Ong J.: In this action the matter in controversy is the right to the possession of the ground floor of premises No. 47 Batu Road, Kuala Lumpur, which are admittedly controlled premises, the exclusive possession of which was given to a partnership for its duration by the partnership agreement, and continues to be retained by the ex-partners since dissolution. This issue can only be resolved by the construction of the partnership agreement and by taking into consideration the effect of the Control of Rent Ordinance upon the relationship of the parties when the partnership came to an end.

The facts, so far as they are material can be dealt with in a small compass.

The plaintiff is the widow of one Abasbhoy, at one time the sole proprietor of "A. Dawoodbhoy & Co.", dealer in textiles and occupier of the said premises as monthly tenant. On March 27, 1950, Abasbhoy had entered into a partnership with the defendants to carry on in the same premises the business of textile merchants under the style of "Motilal Store". The relevant clauses in the deed of partnership are:

"5. The partners shall carry on the said business in partnership for a continuous period of seven (7) years commencing from the 20th of March, 1950 and if the partner *(sic)* at the expiration of the said period of seven years agree to extend the said period it may be extended for such further period as the partners may decide."

"15. The Third Party who is the present tenant of premises No. 47 Batu Road, Kuala Lumpur wherein the partnership business is now being carried on shall continue the tenancy of the said premises holding same in trust for the partnership business and all the monthly

rentals of the said premises shall be paid by the Managing Partner out of the moneys of the partnership business on or before the 10th of every month."

"18. In case of any partner being desirous of retiring from the partnership business, his share and interest in the partnership business shall determine on the date of a written notice of his intention to retire being given to the other partners. The Managing Partner shall as soon as possible thereafter prepare a balance sheet made up to the date of the written notice showing the amount due to the retiring partner for capital and net profit in the said partnership business and shall within one month from the date of the written notice pay the same to the person entitled thereto. The business of the partnership shall continue to be carried on by the remaining partners under and in accordance with the provisions contained in this partnership agreement."

"19. If any partner dies during the continuance of this partnership business the legal representatives of the deceased partner may act and carry on the business of the partnership jointly with the surviving partners. If the legal representatives of the deceased partner shall not be working in the partnership business he shall be paid the usual profits and the capital amount shall be refunded to him after deducting the amount on account of loss if any."

The partnership occupied the whole of the ground floor, while Abasbhoy with his wife, the plaintiff, and other members of his family, continued at all times to reside in the top floor free of rent or liability for electricity and water charges, all of which were paid by the partnership.

Abasbhoy died on October 15, 1954, and probate of his will was granted to the plaintiff and a son of the deceased as his executors on January 28, 1956. The plaintiff, as a legal representative of the deceased, became a partner pursuant to the provisions of Clause 19.

In September, 1955 the plaintiff in her personal capacity purchased the premises and was registered as proprietor. Early in February, 1957 differences arose between the partners over a claim by the defendants to increased remuneration, and on February 19, 1957, the plaintiff, as owner of the premises, gave notice in these terms:

The Executors of the Estate of A. Dawoodbhoy, deceased.
Motilal Doshi s/o Khushal Chand,
Kantilal Doshi s/o Khushal Chand,
Motilal Store,
47, Batu Road,
KUALA LUMPUR.

Dear Sirs,

Premises No. 47 Batu Road, Kuala Lumpur
Madam Asmabai.

We are instructed by Madam Asmabai the owner of the premises at No. 47 Batu Road, Kuala Lumpur of which the Estate of A. Dawoodbhoy, deceased is her tenant as trustee for the partnership business as Motilal Store, to give you notice, which we hereby do, to quit and deliver up vacant possession of the said premises at No. 47 Batu Road, Kuala Lumpur to our client on or before the 31st day of March, 1957.

Yours faithfully,
(Sd) Shearn Delamore & Co.

On the same date the legal representatives of the deceased, as co-partners, gave notice by the same solicitors to the defendants that they did not wish to continue the partnership business after March 20, 1957, upon which date the partnership would determine by effluxion of time. A notice of dissolution of the partnership was duly published in the various newspapers with the consent of all the partners.

Upon these facts, which are not in dispute, the plaintiff claims possession of the premises, mesne profits from April 1, 1957 and costs. The claim is resisted by the defendants on various grounds.

The plaintiff's contention, in a nutshell, is that she, in succession to her deceased husband, held the tenancy in trust for the partnership only during its continuance, and the partnership having been dissolved by effluxion of time, and with the consent of the defendants, on March 20, 1957, the trust came to an end. It was submitted that the defendants were only licensees, whose licence to occupy the premises terminated on March 20, 1957, and accordingly, the plaintiff, as owner, was entitled to treat them as trespassers. It was further submitted that, in the circumstances of this case, there could have been no question of the partnership continuing after March 20, 1957 and of the plaintiff electing under clause 18 to resign; nor did the plaintiff's notice of February 19, 1957 (which was in fact redundant) result in establishing any tenancy statutory or otherwise, after March 31, 1957, because the extinction of the trust by and with the dissolution of the partnership on March 20 left her under no further obligation to retain the premises for the benefit of the extinct partnership.

The defendants, on the other hand, maintain that the situation which arose on March 20, 1957 was one which was expressly provided for by clause 18. Mr. Ramani laid special emphasis on the last sentence: "The business of the partnership shall continue to be carried on by the remaining partners under and in accordance with the provisions contained in this partnership agreement," and he contended that in clause 15 there are no such words as "so long as he shall continue to be a partner" which limited the trust only to the duration of the original partnership.

In my view there are two questions for determination in this case. The first is essentially one of construction of the partnership agreement in which "the governing principle is to ascertain the intention of the parties to the contract through the words they have used." See *M'Connel* v. *Murphy*.[1]

I find it impossible to reconcile the provisions of clauses 5 and 18, which at first sight appear to be in conflict, unless, taking the agreement as a whole, I construe the intention of the parties to be (a) that the partnership was for a fixed term of 7 years, (b) that such term might upon expiry be extended by common consent of the partners for such fixed period as they might agree upon and (c) that during such extended period any partner might exercise his

option to retire. Any other construction of the agreement would lead to absurdity because, if anything, it is at least clear that the three merchants, in their own respective interests, intended first and foremost that their partnership should endure for a continuous period of the first seven years, and, as clause 19 shows, notwithstanding the death of any partner during that period, the premises would continue to be available for the surviving partners to carry on the business, should the legal representatives of the deceased partner decide not to "act and carry on the business of the partnership". Express stipulation to that effect was made to benefit the estate of the deceased partner by sharing in the profits of the business thus continued.

"It is a rule of construction applicable to all written instruments that the instrument must be construed as a whole in order to ascertain the true meaning of its several clauses, and the words of each clause must be so interpreted as to bring them in harmony with the other provisions of the instrument, if that interpretation does no violence to the meaning of which they are naturally susceptible. The best construction of deeds is to make one part of the deed expound the other, and so to make all the facts agree. And effect must, as far as possible, be given to every word and every clause": see 10 *Halsbury* 2nd Ed. p. 258*; and *Re Bedson's Trusts* [2]. In my opinion the only logical and reasonable interpretation which will give any effect at all to clause 18 — in the face of the clear provisions of clause 5 — is to read it as applying only in the event of the partnership extending beyond the original term of seven years. For myself, I do not find the clauses wholly irreconciliable if read in such light. Even if they are, which I doubt, clause 5 must prevail over clause 18: see *Forbes* v. *Git*[3] in which their Lordships of the Privy Council expressed the following opinion:

"The principle of law to be applied may be stated in few words. If in a deed an earlier clause is followed by a later clause which destroys altogether the obligation created by the earlier clause, the later clause is to be rejected as repugnant and the earlier clause prevails."

This principle was followed by Pretheroe J. in *W. A. Buttery* v. *James Warren & Co. Ltd.* [4] Accordingly, in my view, clause 18 never came into effect upon the dissolution of the partnership by effluxion of time, and the defence based on that ground fails.

The defendants next pleaded that "upon the termination by the plaintiff of the tenancy of the Estate of the deceased as trustee, the said Estate as trustee became statutory tenant of the plaintiff, and the defendants as beneficiaries of the said trust are entitled to the protection of the Control of Rent Ordinance."

On this point the question that arises is whether the plaintiff has succeeded in establishing that, upon the dissolution of the partnership, the defendants could not claim to have been in occupation as tenants or sub-tenants, but were merely licensees whose licence to remain on the premises had been revoked.

In support of his argument Mr. Rawson cited four cases: *Doe* v. *Bluck*, [5] *Benham* v. *Gray*, [6] *Burdon* v. *Barkus* [7] and *Pocock* v. *Carter* [8] as authorities for the proposition that where business premises of a partnership are the property of one partner, the other partner or partners have no right to remain on the premises after dissolution of the partnership. I shall quote only from the headnotes.

In *Doe* v. *Bluck* it was held that —

"If A. let a part of a house to a firm consisting of himself and B., for the carrying on of the business of the firm, and the partnership of A and B be dissolved, A may bring an ejectment against B, and recover possession of the part of the house let, without giving B notice to quit."

In *Benham* v. *Gray* the headnote reads:

"In September 1846, a partnership was entered into between A & B, the terms of which were never definitely arranged. The business continued to be carried on, in the names of A & B, in a shop and counting-house forming part of a house of which A was lessee, down to the 25th of December, when A caused B to be served with a notice to dissolve the partnership. On the 2nd of January, 1847, B broke and entered the shop and counting-house:— Held, that he was liable in trespass: his right to occupation of the premises having ceased with the determination of the partnership."

I omit *Burdon* v. *Barkus*, which was in respect of a mining partnership. In *Pocock* v. *Carter* the headnote is as follows:

"Where the premises upon which a partnership business is carried on are, and are declared by the partnership deed to be, the property of one partner, and the partnership deed contains no provision as to the tenancy of the partnership, but only a general direction that all rent is to be paid out of profits, the Court will infer that the partnership was intended to hold the premises on a tenancy during the continuance of the partnership and not on a tenancy from year to year or at will."

The position is undoubtedly so in common law, or where the tenancy rests on contract. But it takes no account of rent control legislation on ex-tenants in possession who, by force of the statute, are invested with the status of irremovability once the contractual tenancy of controlled premises is determined. I am not unmindful of the remark which Maule J. made in the course of argument by counsel in *Benham* v. *Gray:*

"Had the defendant anything more than an easement of conducting the business on the premises, arising out of the partnership?"

which I observe, with respect, is not an *ex cathedra* statement.

In *Pocock* v. *Carter* there was evidence that the partner, who was lessee, had refused to give the original partnership any tenancy of the premises, and, after his death, his widow

* See also 11 *Halsbury* 3rd Ed. p. 389.

continued in partnership with the surviving partners under a deed specifically providing that the lease of the premises remained as her property. Neville J. held that he must infer that the partnership had a tenancy of the premises during its continuance. In the present case the premises are admittedly controlled premises, and the definition of tenancy in section 2 includes "any holding of premises..... by virtue whereof the relationship of landlord and tenant is created, howsoever such relationship may be described." If, following Neville J., I hold that I must infer a tenancy in the partnership during its continuance then the status of irremovability of the partners continuing in occupation must receive recognition.

The issue therefore resolves itself to this: Did the partnership agreement have the effect of substituting for the duration thereof the partners as tenants of the original landlord in place of Abasbhoy, or to create a subtenancy as between Abasbhoy and the partnership? The answer is to be found by construing the agreement as a whole to determine what in law was the true relationship between the parties and not by the label they chose to put upon it: see *Facchini* v. *Bryson*[9], and *Addiscombe Garden Estates Ltd.* v. *Crabbe*[10].

On the facts of the present case it is clear that the partnership had enjoyed exclusive possession of the entire ground floor for the purpose of the partnership business, that the partnership paid the rent, including all bills for electricity and water consumed, and that this was purely a business arrangement. Following the execution of the partnership agreement the business arrangement had prevailed as such for seven years, and in my view the conclusion is inescapable that the agreement in effect created the relationship of landlord and tenant as between Abasbhoy and the partnership, notwithstanding the label of a trust they had put upon their relationship. I do not think it necessary for me to express any opinion as to whether, upon a proper construction of the partnership agreement, the first floor of the premises now occupied by the plaintiff, was excepted from the demise of the premises, or whether "premises" in the agreement, had been used in a restricted sense, bearing in mind that the first floor was reserved for the family of Abasbhoy.

Alternatively, the effect of the agreement was to substitute the partners, in place of Abasbhoy, as tenants of the original landlord, because an underlease for the whole residue of a term is in law an assignment: *Lewis* v. *Baker*[11], in which event the plaintiff, as successor in title, cannot be in any better position than the original landlord.

Therefore, upon any view of the legal position of the defendants with regard to the premises, whether as substituted tenants of the original landlord, in place of Abasbhoy, or as subtenants of the latter, they are entitled to claim the protection of the Ordinance. The plaintiff having failed to establish that the defendants were mere licensees, the action must fail on this ground.

I should further add that it was clearly not competent for the representatives of Abasbhoy, who was only one of three joint tenants, to surrender their statutory tenancy so as to prejudice the rights of the defendants who were co-tenants.

The action is dismissed with costs.

Action dismissed.

Solicitors: *Shearn Delamore & Co.; Braddell & Ramani.*

Re ABDUL LATIFF

[R. Cr. J. (Adams J.) July 14, 1960]

[K. L. — Criminal Revision No. 16 of 1960]

Criminal Law and Procedure — Offensive weapon — Carrying of, in public place — "Otherwise than with lawful authority or for a lawful purpose" — Meaning of — Corrosive and Explosive Substances and Offensive Weapons Ordinance, 1958, s.6(1) and (2) — Onus of proof — Charge — Criminal Procedure Code (Cap. 6), s.173(a).

Before any person can be convicted under section 6(1) of the Corrosive and Explosive Substances and Offensive Weapons Ordinance, 1958, the Court must be satisfied that the accused person found in a public place with an offensive weapon possessed it "otherwise than with lawful authority or for a lawful purpose". The words "with lawful authority", apply to members of the armed forces or others who by virtue of their occupation have to carry arms or things which could be used as an offensive weapon.

Mere possession of an offensive weapon in a public place is not an offence; possession of a weapon in a public place becomes an offence when it is for a purpose otherwise than lawful.

Section 6(2) of the Ordinance places the onus of proving the existence of a lawful purpose on the accused but the extent of proof needed to shift this onus is lighter than that which is placed on the prosecution to prove its case.

CRIMINAL REVISION.

Adams J.: This matter was referred to me by the Magistrate, Kuala Selangor.

The accused was charged under section 6(1) of the Corrosive and Explosive Substances and Offensive Weapons Ordinance (No. 43 of 1958). He pleaded guilty and the Magistrate fined him $50. In his letter putting the case up for revision the Magistrate has stated "At the time of imposing the sentence I was under the impression that the charge was one under the Minor Offences Enactment". He considers that since the charge was in fact under the Corrosive and Explosive Substances and Offensive Weapons Ordinance the sentence is inadequate.

The facts in this case are not disputed by the police and are as follows. The accused was resident in Kuala Lumpur and on the 6th April, 1960, he left Kuala Lumpur to live permanently in the Kuala Selangor district. At about 8.00 p.m. on the 6th April the accused with two others